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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2021-000585

Employers Preferred Insurance Company.....Employer/Carrier/Appellant

v.

Ana Rodriguez Galvan,
Employee.....Claimant/Respondent,

Griffin Stafford North Charleston, Employer, and
Accident Fund General Insurance Company c/o
Accident Fund Insurance Company of America.....Employer/Carrier/Respondent,

and Hartford Accident & Indemnity Co., and.....Employer/Carrier/Respondent.

**FINAL BRIEF OF
HARTFORD ACCIDENT INDEMNITY CO., EMPLOYER/CARRIER/RESPONDENT**

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STATEMENT OF ISSUES ON APPEAL

1. Whether the South Carolina Workers' Compensation Commission properly dismissed Respondent Hartford from the claim?
2. Whether this Honorable Court should affirm the Commission's findings based on the standard of review?

STATEMENT OF THE CASE

Factual Background

This case arises from an admitted work-related injury sustained by Respondent/Claimant Ana Rodriguez Galvan (Respondent Galvan hereafter) on October 9, 2015, wherein she was injured while cleaning a hotel bathroom. At the time of her injury, she was employed by Employer Griffin Stafford North Charleston.

At the time of the October 9, 2015, injury, Employer Griffin Stafford North Charleston had workers' compensation insurance coverage with Employers Preferred Insurance Company (Appellant Employers Preferred hereafter). Thereafter, Griffin Stafford North Charleston changed workers' compensation insurance carriers and was covered by Accident Fund General Insurance Company (Respondent Accident Fund hereafter). It is during Respondent Accident Fund's subsequent insurance coverage of the employer wherein the dispute has arisen between Respondent Galvan and the employer's first two insurance carriers as to whether Respondent Galvan sustained a new injury, experienced a worsening of condition, or an aggravation of a pre-existing condition, related to her October 9, 2015, work injury. In sum, the present issue in this claim is between Appellant Employers Preferred and Respondent Accident Fund as to which insurance carrier is responsible for Claimant's additional medical treatment.

Griffin Stafford North Charleston subsequently had a third workers' compensation insurance carrier, Hartford Accident & Indemnity Co. (Respondent Hartford hereafter).

Respondent Hartford provided coverage for the employer following any allegation of a work injury, either related to the October 2015 injury or a subsequent injury or worsening of symptoms, as alleged during Respondent Accident Fund’s insurance coverage. Specifically, Respondent Hartford provided workers’ compensation insurance coverage for the employer from April 1, 2018–April 1, 2019—this time period covers no significant event and has no relevance to the claim, as described in greater detail *infra*. See Workers’ Compensation and Employer’s Liability Policy Information Page for Respondent Hartford noting policy period from 04/01/18–04/01/19.¹ (R. p. 788).

Procedural Background

Respondent Galvan requested a hearing via a Form 50,² dated March 6, 2018.³ (R. pp. 792-793). Although Respondent Galvan’s workers’ compensation claim had been admitted by Appellant Employers Preferred—the insurance carrier at the time of the underlying 2015 compensable injury—Appellant Employers Preferred denied additional medical treatment recommended by the authorized treating physician.

As referenced above, thereafter, additional discovery and litigation ensued including the addition of the employer’s two subsequent workers’ compensation insurance carriers as parties to

¹ It is also worth noting Griffin Stafford North Charleston has continued to change workers’ compensation insurance carriers during the pendency of this litigation and has been provided with coverage from numerous additional providers subsequent to Respondent Hartford’s coverage.

² In workers’ compensation claims, a Form 50 is an “Employee’s Notice of Claim and/or Request for Hearing.”

³ Respondent Hartford notes this pleading date preceded both Respondent Hartford’s involvement in the claim as detailed in greater length in Argument IB, *infra*, but also predates Respondent Hartford’s policy coverage for the employer. See Workers’ Compensation and Employer’s Liability Policy Information Page for Respondent Hartford noting policy period from 04/01/18–04/01/19. (R. p. 788).

the case—Respondent Accident Fund and Respondent Hartford. (R. pp. 065-066; R. pp. 040-041; R. pp. 042-045; R. p. 039). All insurance carriers properly and timely filed responsive Form 51's.⁴

A hearing was held before the Single Commissioner on April 23, 2019. (R. pp. 723-755). On August 20, 2019, the Decision and Order of the Single Commissioner was issued. (R. pp. 001-015). In pertinent part, the Single Commissioner found the substantial evidence in the record demonstrated Respondent/Claimant had not reached maximum medical improvement for her October 9, 2015, injury, and she was entitled to additional medical treatment as recommended for the same. (R. pp. 013-014). The Single Commissioner further found the Appellant Employers Preferred who had admitted the claim was still responsible for Claimant's medical treatment. (*Id.*). Accordingly, the Single Commissioner released Respondent Accident Fund and Respondent Hartford from any liability for the claim. (*Id.*).

Thereafter, Appellants appealed the decision of the Single Commissioner by filing a Form 30.⁵ A Full Commission hearing was held, and the Appellate Panel affirmed the Single Commissioner's Decision and Order in its entirety. (Decision and Order of Full Commission dated May 4, 2021, R. pp. 016-038).⁶

Thereafter, Appellant filed this appeal.

STANDARD OF REVIEW

⁴ In workers' compensation claims, a Form 51 is an "Employer's Answer to Request for Hearing."

⁵ In workers' compensation claims, a Form 30 is a "Request for Commission Review." *See also* Footnote 5, *infra*.

⁶ The Full Commission's Decision and Order specifically denotes the issues which were preserved for Full Commission review and that all other issues were deemed waived as a matter of law. (Decision and Order of the Full Commission dated May 4, 2021, R. pp. 016-038; *see also* Respondent Hartford's Argument IA, *infra*). It is worth noting all parties, including Appellant, had an opportunity to brief the issues and to raise any objection to their respective positions on the record at the time of the hearing. (*See* Transcript of Hearing of Full Commission, R. pp. 756-785).

The *Administrative Procedures Act*, (APA hereinafter), governs this Court's review of decisions from the Full Commission.⁷ See *Shealy v. Aiken Cty.*, 341 S.C 448, 454, 535 S.E.2d 438, 443 (2000) (internal citations omitted). This Court may only reverse or modify a decision of the Full Commission wherein the decision is affected by an error of law, or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *Id.*; See also S.C Code Ann. § 1-23-380 (2008). Importantly, substantial evidence has been explained to be not a mere scintilla of evidence, nor evidence viewed only from one side; rather, substantial evidence is, when the whole record is considered, evidence that would allow reasonable minds to reach the conclusion the Full Commission reached. *Shealy v. Aiken Cty.*, 341 S.C at 456, 535 S.E.2d at 443; see also *Waters v. South Carolina Land Res. Conservation Comm'n.*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996) (internal citations omitted).

Further, in workers' compensation cases, the Full Commission is the ultimate fact finder and the final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission. *Shealy v. Aiken Cty.*, 341 S.C at 456, 535 S.E.2d at 443 (internal citations omitted). It is not the task of this Court to weigh the evidence as found by the Full Commission. *Id.*

ARGUMENTS

I. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION PROPERLY DISMISSED RESPONDENT HARTFORD FROM THIS CLAIM.⁸

⁷ As this Honorable Court is well-aware, the Full Commission is made up of a reviewing panel of three Commissioners, notwithstanding the Single Commissioner who heard the claim and issued the original Decision and Order. Accordingly, at times, Respondent Hartford may refer to the Single Commissioner, the Full Commission, or the Commission throughout the brief herein. Wherein the Commission, or South Carolina Workers' Compensation Commission, is utilized, Respondent Hartford intends for the term to encompass the entire review history of this claim. To date, four Commissioners have analyzed this claim—the Single Commissioner and three Commissioners on the Full Commission review panel.

⁸ If this Honorable Court agrees with Respondent Hartford that their dismissal was proper, the determination is dispositive as it relates to any further involvement by Respondent Hartford in the claim and whether standing exists for Respondent Hartford to otherwise respond to any and all issues in the underlying claim. See generally *Futch v.*

It appears Appellant Employers Preferred, at least impliedly, agrees with Respondent Hartford's Argument I—the Commission properly dismissed Respondent Hartford from the underlying claim—as Appellant did not directly address this in the Statement of Issues on Appeal or in Appellant's enumerated Arguments. However, in an abundance of caution, Respondent Hartford addresses this aspect of the case as set forth below.⁹

A. The issue of whether Respondent Hartford was properly dismissed from the underlying claim is not preserved for appellate review and is not properly before this Court.

Respondent Hartford contends the Full Commission's Decision and Order Finding of Fact #8 and Conclusion of Law "Order and Award" that [Respondent] Hartford be dismissed from the claim were never specifically appealed, and therefore, are the law of the case and are legally binding. (R. pp. 019, 021). Specifically, Respondent Hartford asserts Appellant has not, to date, properly raised or preserved an argument against Respondent Hartford's dismissal. On the contrary, the issues before the Full Commission were specifically consolidated into the following three issues:

"(1) Does the greater weight of evidence in the record and the applicable law suggest that [] Claimant reached [maximum medical improvement] MMI for her October 9, 2015 injury by accident and that Employers Insurance shall not be responsible for [] Claimant's ongoing medical treatment for the worsening of her condition after she reached MMI?;

(2) Does the applicable of South Carolina Code Ann. Regulation 67-612 and *Morgan v. JPS Auto.*, 321 S.C. 201, 476 S.E.2d 457 (Ct. App. 1996), suggest that the

McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when disposition of a prior issue is dispositive) (internal citations omitted).

⁹ Respondent Hartford finds it is necessary to address this aspect of the claim at the outset. *See* Footnote 4, *supra*.

supplemental questionnaire from Dr. George Pappas should be excluded from the evidentiary record?;
(3) Did the Single Commissioner err in finding that the Claimant's IME physician, Dr. Pappas, shall be the new authorized treating physician due to the prior authorized treating physician retiring from surgical practice?"

(Full Commission Order, R. pp. 026-027).

The Full Commission Order goes on to expressly state that the foregoing three issues were the only issues raised in Appellant's brief, were the only issues properly before the Appellate Panel at the hearing on November 19, 2019, and "*all* other issues [were] deemed to have been waived as a matter of law." (R. p. 027) (emphasis added). Respondent Hartford also notes Appellant did not list this as an issue in her Full Commission Brief, which bolsters the Full Commission's aforementioned statements as to waiver as a matter of law.

In addition to Appellant's failure to preserve this issue at the Full Commission level, Respondent Hartford notes Appellant's failure to list this as an issue on appeal does not satisfy the plain text of South Carolina Appellate Court Rule 208(B). Even assuming, *arguendo*, that Appellant asserts they have made the issue reasonably clear for appellate consideration, Respondent Hartford disagrees with the same, specifically as it relates to Respondent Hartford's dismissal from the underlying claim. *See generally Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011) (analyzing the importance of issue preservation in South Carolina and the burden of the appellant to specifically articulate an issue for appellate adjudication).

Based on the preservation deficiency and the well-established law associated with the same, Respondent Hartford asserts the Commission properly dismissed them from the claim and any issue or argument raised to the contrary is not properly before this Court for consideration.

B. Should this Honorable Court wish to consider the issue of whether Respondent Hartford was properly dismissed from the claim, the substantial evidence in the record supports Respondent Hartford's dismissal.

Notwithstanding the procedural deficiencies set forth in Argument I, the Commission properly found Respondent Hartford should be dismissed in accordance with the substantial evidence in the claim.

There are two essential time periods in this claim, each with a distinctive workers' compensation insurance carrier. The first relevant time period is October 9, 2015, as the date of the admitted work accident wherein Griffin Stafford North Charleston's insurance carrier was Appellant Employers Preferred. The second significant time period in this claim is the subsequent timeframe wherein Griffin Stafford North Charleston had workers' compensation insurance with Respondent Accident Fund. During this time period, a dispute has arisen based on *Geathers*,¹⁰ wherein Appellant Employers Preferred alleges Respondent Galvan sustained a new work injury and, therefore, the causal connection to the underlying October 9, 2015, work injury has been broken and Respondent Accident Fund is now responsible for Respondent Galvan's medical treatment. It is undisputed Respondent Hartford was not the insurance carrier for the insured during either of the two relevant time periods for this claim.

Respondent Hartford was not added to the claim until approximately two and a half years after the underlying work injury, while the claim was being litigated, following multiple depositions of Claimant and expert evaluations and medical examinations. (Motion to Add Hartford dated May 23, 2018, R. pp. 042-045; Order Granting Motion dated June 4, 2018, R. p. 039). Respondent Hartford only provided coverage for the employer from April 1, 2018–April 1, 2019. (Workers' Compensation and Employer's Liability Policy Information Page for Respondent

¹⁰ *Geathers v. 3V, Inc.*, 371 S.C. 69, 636 S.E.2d 29 (2007).

Hartford noting policy period from 04/01/18–04/01/19, R. p. 788). No party has offered any piece of evidence indicating that any significant event—or relevant event—occurred during the time period of Respondent Hartford’s insurance coverage of the employer.

Respondent Hartford contends that the Commission allowed their addition to the claim as a practical necessity for adjudication. In cases like these, where the underlying claim is admitted but a determination as to the proper party to provide additional medical treatment is warranted, the Commission is inclined to grant “Motion[s] to Add” parties—this inclination is based on the framework that the workers’ compensation system has been established to inure to the benefit of the injured worker, and to provide the injured worker with medical treatment, where a dispute amongst insurance carriers exists. Therefore, the Commission’s decision to add Respondent Hartford to the claim during discovery and litigation—albeit, late in the context of when the injury occurred—has no bearing on the propriety of their involvement at this juncture.

Respondent Hartford has consistently maintained that they are not responsible or liable for any aspect of the claim. (Single Commissioner Hrg. Trans., R. pp. 723-755; *see also* Full Commission Hrg. Trans., R. p. 778, line 25-p. 779, line 14). Specifically, Respondent Hartford has consistently maintained that either the first insurance carrier—Appellant, who was the insurer at the time of the October 9, 2015, claim—or the subsequent carrier—Respondent Accident Fund—are responsible for the recommended medical treatment. (*Id.*).

Respondent Hartford asserts no evidence has been presented implicating their responsibility for the claim. Accordingly, in addition to the foregoing procedural and preservation arguments, Respondent Hartford asserts there are substantive arguments as to why they were properly dismissed from the claim and respectfully requests this Honorable Court affirm the Commission as to this uncontested finding.

II. BASED ON THE APPLICABLE STANDARD OF REVIEW, THE HOLDINGS OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION SHOULD BE AFFIRMED.

Respondent Hartford respectfully requests this Court affirm the findings of the Commission based on the applicable standard of review. This Honorable Court “shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact” and its review of the Commission’s findings of fact are limited. *Waters v. South Carolina Res. Conservation Comm’n*, 321 S.C. 219, 225 467 S.E.2d 913, 917, 917 (1996); *see also* S.C. Code Ann. § 1-23-380 (2008). This Court can only reverse the Commission’s “findings, inferences, conclusions, or decisions” if they are “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record,” or if they are “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” *Id.*

In this instance, Appellant’s pleas to this Court highlight Appellant’s dissatisfaction with the results of how the Commission weighed the evidence and the resulting conclusion. However, even the “possibility of drawing two inconsistent conclusions from the evidence will not mean the [Commission’s] conclusion was unsupported by substantial evidence” and the “burden is on appellants to prove convincingly that the [Commission’s] decision is unsupported by the evidence.” *Id.* (Internal citations omitted).

Respondent Hartford contends Appellant has not met the burden of convincingly proving that the Commission’s decision is unsupported by the evidence. Specifically, Respondent Hartford asserts this is true with respect to their continued involvement in the claim rather than a dismissal, as discussed in greater detail in Argument I, *supra*. However, notwithstanding Respondent Hartford’s continued involvement in the claim, they also purport Appellant has not overcome this

burden as to any issue in the underlying claim. Accordingly, Respondent Hartford suggests this Court is bound by the standard of review in affirming the decision of the Commission.

CONCLUSION

For the reasons set forth herein, Respondent Hartford respectfully requests the Court affirm the decision of the Commission in full. In doing so, Respondent Hartford requests this Court affirm the finding that their dismissal from the claim was proper. Respondent Hartford maintains their assertion that the issue of their dismissal is not properly before this Court as it was not preserved for appellate review, and the substantial evidence standard of review supports affirmation of all of the Commission's findings.

Respectfully Submitted,



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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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